

Commodity Credit Corporation, USDA

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among multiple applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1469.31 Appeals.

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

§ 1469.32 Compliance with regulatory measures.

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from their performance under the contract.

§ 1469.33 Access to agricultural operation.

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the

performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1469.34 Performance based on advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

§ 1469.35 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1469.36 Misrepresentation and scheme or device.

(a) If the Department determines that a participant erroneously represented any fact affecting a CSP determination made in accordance with this part, the participant's conservation stewardship contract will be terminated immediately in accordance with § 1469.25(b). The participant will forfeit all rights for future contract payments, and must refund payments received, plus interest, and liquidated damages as described in § 1469.25.

(b) A producer who is determined to have knowingly:

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(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest, and liquidated damages as determined in accordance with §1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant's interest in all conservation stewardship contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

**PART 1470—CONSERVATION
STEWARDSHIP PROGRAM**

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3838d–3838g.

Subpart A—General Provisions

SOURCE: 74 FR 37511, July 29, 2009, unless otherwise noted.

§ 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year 2009 and thereafter.

(b) The purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by:

(1) Undertaking additional conservation activities; and

(2) Improving, maintaining, and managing existing conservation activities.

(c) CSP is applicable in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) NRCS provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related natural resources, and for any similar conservation purpose as determined by NRCS.

§ 1470.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) To achieve the conservation goals of CSP, NRCS will:

(1) Make the program available nationwide to eligible applicants on a continuous application basis with one or more ranking periods to determine enrollments, one of the ranking periods shall occur in the first quarter of each fiscal year, to the extent practicable; and

(2) Develop conservation measurement tools for the purpose of carrying out the program.

(d) NRCS will, to the maximum extent practicable, manage CSP to achieve a national average rate of \$18 per acre, which includes the costs of all financial and technical assistance, and any other expenses associated with program enrollment and participation.

(e) NRCS will establish a national target to set aside five percent of CSP acres for socially disadvantaged farmers or ranchers, and an additional five percent of CSP acres for beginning farmers or ranchers.

(f) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program issues, including the identification of priority resource concerns for a State, or the specific geographic areas within a State;

(2) Assign NRCS employees as Designated Conservationists to be responsible for CSP at the local level; and

(3) Be responsible for the program in their assigned State.

(g) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Indian Tribes, private entities, and individuals to assist NRCS with program implementation.

§ 1470. 3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, rangeland, and pastureland on which agricultural products, or livestock are produced and resource concerns may be addressed. Agricultural lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS.

Agricultural operation means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the applicant for the term of the proposed contract; and

(2) Which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

Animal waste storage or treatment facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a person, legal entity, joint operation, or Indian Tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.

Beginning farmer or rancher means:

(1) An individual or legal entity who:

(i) Has not operated a farm, ranch, or nonindustrial private forest land, or who has operated a farm, ranch, or nonindustrial private forest land for not more than 10 consecutive years (this requirement applies to all members of a legal entity); and

(ii) Will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Conservation activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities, as determined by NRCS.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” “natural resource district,” or similar name.

Conservation measurement tool means procedures developed by NRCS, to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance improvement.

Conservation planning means using the planning process outlined in the applicable National Planning Procedures Handbook of the United States Department of Agriculture.

Conservation practice means a specified treatment, such as a structural or vegetative practice or management technique, commonly used to meet a specific need in planning and carrying out soil and water conservation programs for which standards and specifications, including interim standards and specifications, have been developed. Conservation practices are in the NRCS Field Office Technical Guide (FOTG), Section IV, which is based on the National Handbook of Conservation Practices (NHCP).

Conservation stewardship plan means a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant's conservation objectives will be maintained with the plan.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is an agreement for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

Designated Conservationist means an NRCS employee whom the State Conservationist has designated as responsible for CSP at the local level.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.

Enrollment means for the initial signup for FY2009, NRCS will consider a participant “enrolled” in CSP based on the fiscal year the application is submitted, once NRCS approves the participant's contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Indian lands means all lands held in trust by the United States for individual Indians or Indian Tribes, or all land titles held by individual Indians or Tribes, subject to Federal restrictions against alienation or encumbrance, or lands subject to the rights of

use, occupancy and/or benefit of certain Indian Tribes. This term also includes lands for which the title is held in fee status by Indian Tribes, and the U.S. Government-owned land under the Bureau of Indian Affairs jurisdiction.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law.

Liquidated damages means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local working group means the advisory body as described in 7 CFR part 610.

Management measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program, administered by the Agricultural Marketing Service, USDA, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of the USDA, which has responsibility for administering CSP using the funds, facilities, and authorities of the Commodity Credit Corporation.

Nonindustrial private forest land means rural land that has existing tree cover or is suitable for growing trees, and is owned by an individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance means work performed by the participant to maintain existing conservation activities to at least the level of conservation performance identified at the time of application, and maintain additional conservation activities installed and adopted over the contract period.

Participant means a person, legal entity, joint operation, or Indian Tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

Payment means financial assistance provided to the participant under the terms of the CSP contract.

Person means, as defined in part 1400 of this chapter, an individual, natural person and does not include a legal entity.

Priority resource concern means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local working groups, as a priority for a State, or the specific geographic areas within a State.

Producer means a person, legal entity, or joint operation who has an interest in the agricultural operation, according to part 1400 of this chapter, or who is engaged in agricultural production or forest management.

Resource concern means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.

Resource-conserving crop means a crop that is one of the following:

- (1) A perennial grass, legume, or grass/legume grown for use as forage, seed for planting, or green manure;
- (2) A high residue producing crop; or
- (3) A cover crop following an annual crop.

Resource-conserving crop rotation means a crop rotation that:

- (1) Includes at least one resource conserving crop as determined by the State Conservationist;

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- (2) Reduces erosion;
- (3) Improves soil fertility and tilth;
- (4) Interrupts pest cycles; and
- (5) Reduces depletion of soil moisture or otherwise reduces the need for irrigation in applicable areas.

Secretary means the Secretary of the USDA.

Socially disadvantaged farmer or rancher means a producer who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group, without regard to their individual qualities. These groups consist of American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics. Gender alone is not a covered group for the purposes of NRCS conservation programs. A socially disadvantaged applicant is an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement CSP and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship threshold means the level of natural resource conservation and environmental management required, as determined by NRCS using conservation measurement tools, to conserve and improve the quality and condition of a natural resource.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

- (1) Technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and

assistance with design and implementation of conservation activities; and

- (2) Technical infrastructure, including processes, tools and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Technical Service Provider (TSP) means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants, in lieu of or on behalf of NRCS as referenced in 7 CFR part 652.

§ 1470.4 Allocation and management.

- (a) The Chief will allocate acres and associated funds to State Conservationists, based:

- (1) Primarily on each State's proportion of eligible land to the total amount of eligible land in all States; and

- (2) On consideration of—

- (i) The extent and magnitude of the conservation needs associated with agricultural production in each State,

- (ii) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs, and

- (iii) Other considerations determined by the Chief, to achieve equitable geographic distribution of program participation.

- (b) In any fiscal year, acres allocated to a State that are not enrolled by a date determined by the Chief, may be reallocated with associated funds to another State for use in that fiscal year under CSP.

§ 1470.5 Outreach activities.

- (a) NRCS will establish program outreach activities at the national, State, and local levels to ensure that potential applicants who control eligible land are aware and informed that they may be eligible to apply for program assistance.

- (b) Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, beginning farmers or ranchers, limited resource producers, and socially disadvantaged farmers or

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ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders.

(c) NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type or operation, or production system, including specialty crop and organic production.

§ 1470.6 Eligibility requirements.

(a) *Eligible applicant.* To be eligible to participate in CSP, at the time of application, an applicant must meet all the following requirements:

(1) Be the operator in the Farm Service Agency (FSA) farm records management system for the agricultural operation being offered for enrollment in the program. Potential applicants that are not in the FSA farm records management system must establish records with FSA prior to application. Potential applicants whose records are not current in the FSA farm records management system must update those records with FSA prior to application;

(2) Have documented control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(3) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(4) Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors; conservation activity and production system records; information to verify the applicant's status as a beginning farmer and rancher or socially disadvantaged farmer or rancher, if applicable; and payment eligibility as established by 7 CFR part 1400; and

(6) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identi-

fication number for each individual eligible for payment.

(b) *Eligible land.* A contract application must include the eligible land on an applicant's entire agricultural operation, except as identified in paragraph (b)(3) of this section. The land as described below is part of the agricultural operation, and eligible for enrollment and payment under CSP:

(1) Private agricultural land;

(2) Agricultural Indian lands; and

(3) Nonindustrial private forest land (NIPF).

(i) By special rule in the statute, NIPF is eligible land.

(ii) No more than 10 percent of the acres enrolled nationally in any fiscal year may be NIPF.

(iii) The applicant will designate by submitting a separate application if they want to offer NIPF for funding consideration.

(iv) If designated for funding consideration, then the NIPF component of the operation will include all the applicant's NIPF. If not designated for funding consideration, then the applicant's NIPF will not be part of the agricultural operation.

(c) *Ineligible land.* The following ineligible lands are part of the agricultural operation, but ineligible for inclusion in the contract or for payment in CSP:

(1) Land enrolled in the Conservation Reserve Program, 7 CFR part 1410;

(2) Land enrolled in the Wetlands Reserve Program, 7 CFR part 1467;

(3) Land enrolled in the Grassland Reserve Program, 7 CFR part 1415;

(4) Land enrolled in the Conservation Security Program, 7 CFR part 1469;

(5) Public land including land owned by a Federal, State, or local unit of government; and

(6) Land used for crop production after June 18, 2008, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless that land—

(i) Had previously been enrolled in the Conservation Reserve Program,

(ii) Has been maintained using long-term crop rotation practices as determined by the Designated Conservationist, or

(iii) Is incidental land needed for efficient operation of the farm or ranch as

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determined by the Designated Conservationist.

§ 1470.7 Enhancements and conservation practices.

(a) Participant decisions describing the additional enhancements and conservation practices to be implemented under the conservation stewardship contract will be recorded in the conservation stewardship plan.

(b) NRCS will make available to the public the list of enhancements and conservation practices available to be installed, adopted, maintained, and managed through CSP.

§ 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a technical service provider as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is available and program specifications are appropriate so as not to limit producer participation because of size or type or operation, or production system, including specialty crop and organic production. In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these producers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Eligible applicants may submit an ap-

plication to enroll eligible land into CSP on a continuous basis.

(b) *Eligibility.* To be eligible to participate in CSP, an applicant must submit to the Designated Conservationist for approval, a contract application that:

(1) Indicates the applicant's conservation activities, at the time of application, are meeting the stewardship threshold for at least one resource concern;

(2) Would, at a minimum, meet or exceed the stewardship threshold for at least one priority resource concern by the end of the conservation stewardship contract by—

(i) Installing and adopting additional conservation activities, and

(ii) Improving, maintaining, and managing conservation activities present on the agricultural operation at the time the contract application is accepted by NRCS;

(3) Provides a map, aerial photograph, or overlay that—

(i) Identifies the applicant's agricultural operation and/or NIPF component of the operation, and

(ii) Delineates eligible land offered for payment with associated acreage amounts; and

(4) If the applicant is applying for on-farm research and demonstration activities or for pilot testing, describes the nature of the research, demonstration or pilot testing in a manner consistent with design protocols and application procedures established by NRCS.

(c) *Evaluation of contract applications.* NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the first quarter of the fiscal year.

(2) In evaluating CSP applications, the State Conservationist or Designated Conservationist will rank applications based on the following factors, using the conservation measurement tool, to the maximum extent practicable—

(i) Level of conservation treatment on all applicable priority resource concerns at the time of application;

(ii) Degree to which the proposed conservation treatment on applicable

priority resource concerns effectively increases conservation performance;

(iii) Number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract; and

(iv) Extent to which other resource concerns, in addition to priority resource concerns, will be addressed to meet or exceed the stewardship threshold by the end of the contract period.

(3) In the event that application ranking scores from (2) above are similar, the application that represents the least cost to the program will be given higher priority.

(4) The State Conservationist or Designated Conservationist may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(d) *State and local priorities.* The Chief may develop and use additional criteria for evaluating applications that are determined necessary to ensure that national, State, and local conservation priorities are effectively addressed.

(e) *Application.* The State Conservationist will take the following actions to facilitate the evaluation and ranking of applications:

(1) Implement the use of the conservation measurement tool to estimate existing and proposed conservation performance;

(2) Identify not less than 3 nor more than 5 priority resource concerns for a State, or the specific geographic areas within a State, with advice from the State Technical Committee and local working groups; and

(3) Establish ranking pools for application evaluation purposes.

(f) *Ranking pools.* Ranking pools will be established based on the same State or geographic area boundaries used to identify priority resource concerns so applicants will be ranked relative to other applicants who share similar resource challenges.

(1) NIPF will compete in ranking pools separate from agricultural land. An applicant with both NIPF and agricultural land will have the options to submit:

(i) One application for NIPF;

(ii) One application for agricultural land; or

(iii) Two applications, one for each land type.

(2) An applicant with an agricultural operation or NIPF component of the operation that crosses ranking pool boundaries will make application and be ranked in the ranking pool where the largest acreage portion of their operation occurs.

(3) Within each established geographic area, the State Conservationist will set up special pools for conservation access for certain farmers or ranchers, including:

(i) One pool for socially disadvantaged farmers or ranchers; and

(ii) One pool for beginning farmers or ranchers.

(4) Applicants who want their application considered in the pool for socially disadvantaged farmers or ranchers or beginning farmers or ranchers will designate that intent on their application and provide the required information.

(5) In any fiscal year, acres and associated funds allocated to a ranking pool or pool that are not enrolled by a date determined by the State Conservationist, may be reallocated within the State for use in that fiscal year under CSP.

(g) *Application approval.* The State Conservationist or Designated Conservationist will make application approval determinations during established ranking periods based on eligibility and ranking score. An eligible application may be approved for funding after a determination of the application's ranking priority.

§ 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be developed in accordance with § 1470.22, the State Conservationist or designee shall enter into a conservation stewardship contract with the participant to enroll the eligible land to receive payment.

(b) The conservation stewardship contract shall:

(1) Provide for payments over a period of 5 years;

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(2) Incorporate by reference the conservation stewardship plan;

(3) State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;

(4) Incorporate all provisions as required by law or statute, including requirements that the participant will—

(i) Implement the conservation stewardship plan approved by NRCS during the term of the contract,

(ii) Operate and maintain conservation activities on the agricultural operation consistent with § 1470.23,

(iii) Comply with the terms of the contract, or documents incorporated by reference into the contract,

(iv) Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with § 1470.27,

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with § 1470.25,

(vi) Maintain, and make available to NRCS upon request, appropriate records documenting applied conservation activity and production system information, and providing evidence of the effective and timely implementation of the conservation stewardship plan and contract, and

(vii) Not engage in any action during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;

(5) Permit all economic uses of the land that:

(i) Maintain the agricultural or forestry nature of the land, and

(ii) Are consistent with the conservation purposes of the contract;

(6) Include a provision to ensure that a participant shall not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including a disaster or re-

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lated condition, as determined by the State Conservationist; and

(7) Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

§ 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the National Planning Procedures Handbook to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Associated supporting information maintained with the participant's plan will:

(1) Identify and inventory resource concerns;

(2) Establish benchmark data on the condition of existing conservation activities;

(3) Document the participant's conservation objectives to reach and exceed stewardship thresholds;

(4) Include a plan map delineating enrolled land with associated acreage amounts receiving program payments;

(5) Include in the case where a participant wishes to initiate or retain organic certification, documentation that will support the participant's transition to or participation in the National Organic Program;

(6) Include in the case where a participant is approved for the on-farm research and demonstration or pilot testing option, a research, demonstration or pilot testing plan consistent with design protocols and application procedures established by NRCS; and

(7) Contain other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

The participant will operate and maintain existing conservation activities on the agricultural operation to at

least the level of conservation performance identified at the time of application for the conservation stewardship contract period and additional activities installed and adopted over the term of the conservation stewardship contract.

§ 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide an annual payment under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing activities.

(1) To receive an annual payment, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one enhancement must be scheduled, installed, and adopted in the first year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third year of the contract; and

(ii) Maintain at least the level of existing conservation performance identified at the time of application for the conservation stewardship contract period.

(2) A participant's annual payment will be determined using the conservation performance estimated by the conservation measurement tool, and computed by land-use type for enrolled eligible land.

(3) The annual payment rates will be based to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training;

(ii) Income foregone by the participant; and

(iii) Expected environmental benefits, determined by estimating conservation performance improvement using the conservation measurement tool.

(4) The annual payment method will accommodate some participant operational adjustments without the need for contract modification.

(i) Enhancements may be replaced with similar enhancements as long as

the conservation performance estimated by the conservation measurement tool is equal to or better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will not be allowed.

(ii) Adjustments to existing activities may occur consistent with conservation performance requirements from § 1470.23(a).

(5) Enhancements may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt a resource-conserving crop rotation.

(1) The State Conservationist will determine whether a resource-conserving crop rotation is eligible for supplemental payments based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits.

(2) A participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third year of the contract and planted on all rotation acres by the fifth year of the contract.

(3) The supplemental payment rate will be based, to the maximum extent practicable, on costs incurred and income foregone by the participant and expected environmental benefits, determined by estimating conservation performance improvement using the conservation measurement tool.

(c) *On-farm research and demonstration or pilot testing.* A participant may be compensated through their annual payment for:

(1) On-farm research and demonstration activities; or

(2) Pilot testing of new technologies or innovative conservation activities.

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(d) *Timing of payments.* NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year.

(e) *Noncompensatory matters.* A CSP payment to a participant shall not be provided for:

(1) Conservation practices or enhancements applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations; or

(3) Conservation activities for which there is no cost incurred or income foregone by the participant.

(f) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate, exceed \$40,000 during any fiscal year for all CSP contracts entered into, and \$200,000 for all CSP contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(g) *Contract limit.* Each conservation stewardship contract will be limited to \$200,000 over the term of the initial contract period.

(h) *Payment limitation provisions for Indians for Indians represented by the BIA.* With regard to contracts with individual Indians or Indians represented by BIA, payments exceeding the payment limitation may be made to the Tribal participant if a BIA or Tribal official certifies in writing that no one individual, directly or indirectly, will receive more than the payment limitation. The Tribal entity must also provide, annually, a listing of individuals and payments made, by social security or tax identification number or other unique identification number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request of NRCS, proof of payments made to the person or legal entity that incurred costs or sacrificed income re-

lated to conservation activity implementation.

(i) *Requirements for payment.* To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' social security numbers and percentage interest in the joint operation or legal entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(j) *Unique tax identification numbers.* Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other CSP contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of §1470.36.

(k) *Payment data.* NRCS will maintain detailed and segmented data on CSP contracts and payments to allow for quantification of the amount of payments made for:

(1) Installing and adopting additional activities;

(2) Improving, maintaining, and managing existing activities;

(3) Participation in research and demonstration, or pilot projects; and

(4) Development and periodic assessment and evaluation of conservation stewardship plans developed under this rule.

§ 1470.25 Contract modifications and transfers of land.

(a) NRCS may allow a participant to modify a conservation stewardship contract if NRCS determines that the modification is consistent with achieving the purposes of the program.

(b) NRCS will not allow a participant to modify a conservation stewardship

contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved by NRCS for renewal.

(c) Land under contract will be considered transferred if the participant loses control of the acreage for any reason.

(1) The participant is responsible to notify NRCS prior to any voluntary or involuntary transfer of land under contract.

(2) If all or part of the land under contract is transferred, the contract terminates with respect to the transferred land unless:

(i) The transferee of the land provides written notice within 60 days to NRCS that all duties and rights under the contract have been transferred to, and assumed by, the transferee; and

(ii) The transferee meets the eligibility requirements of the program.

§ 1470.26 Contract renewal.

(a) At the end of an initial conservation stewardship contract, NRCS will allow a participant to renew the contract to receive payments for one additional five-year period, subject to the availability of funds, if they meet criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must:

(1) Be in compliance with the terms of their initial contract as determined by NRCS;

(2) Add any newly acquired eligible land that is part of the agricultural operation and meets minimum treatment criteria as established and determined by NRCS;

(3) Meet stewardship thresholds for additional priority resource concerns as determined by NRCS; and

(4) Agree to adopt conservation activities as determined by NRCS.

§ 1470.27 Contract violations and termination.

(a) The State Conservationist may terminate, or by mutual consent with the participants, terminate a contract where:

(1) The participants are unable to comply with the terms of the contract as the result of conditions beyond their control; or

(2) Contract termination, as determined by the State Conservationist, is in the public interest.

(b) If a contract is terminated in accordance with the provisions of paragraph (a) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the contract terms or documents incorporated therein, NRCS shall give the participant a period of time, as determined by NRCS, to correct the violation and comply with the contract terms and attachments thereto. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1470.36; or

(3) Engaged in actions that are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating CSP contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation activity has achieved the expected conservation

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performance improvement, is not adversely affected by the violation or the absence of other conservation activities that would have been installed under the contract, and the associated operation and maintenance requirement of the activity had been met.

(2) NRCS will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case.

(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program.

(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1470.31 Appeals.

A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation activities are not subject to appeal.

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§ 1470.32 Compliance with regulatory measures.

Participants shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

§ 1470.33 Access to agricultural operation.

NRCS will have the right to enter an agricultural operation for the purposes of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access shall include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS shall make an effort to contact the participant prior to the exercise of this provision.

§ 1470.34 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. The financial or technical liability for any action by a participant that was taken based on the advice of a Technical Service Provider will remain with the Technical Service Provider and will not be assumed by NRCS.

(b) If a participant has been found in violation of a provision of the conservation stewardship contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.